

AMENDMENT # 1 TO THE
SUPERFUND STATE CONTRACT
FOR
EUREKA MILLS SITE, JUAB COUNTY, UTAH

BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY
AND
THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

This Amendment #1 (“Amendment”) to that certain “Superfund State Contract for Implementation of Fund-Lead Remedial Action” at the Eureka Mills Site, Juab County, Utah dated July 12, 2004 (the “SSC”) between the U. S. Environmental Protection Agency (“EPA”) and the Utah Department of Environmental Quality (“UDEQ”) is made as of the Effective Date between EPA and UDEQ, each a “Party” and, collectively, the “Parties” to this Amendment.

RECITALS

WHEREAS, the Parties disagreed on several issues that were either not covered by the SSC or that were not similarly interpreted by the Parties, and

WHEREAS, the Parties wish to clarify agreement on the manner in which the open cell will be closed in approximately thirty years, as described in the Operation and Maintenance Manual at a present day cost estimate of \$ 7,590.00, and

WHEREAS, the Parties wish to clarify agreement on the manner in which operation and maintenance (O&M) of remedial actions not funded by the Superfund (“Non-Fund Lead Areas RA”) will be implemented, and

WHEREAS, the Parties wish to clarify agreement that State operation and maintenance for OU’s 00 through 03 will begin upon the collective Remedial Action completion for those operable units, and

WHEREAS, EPA shall provide the Eureka special account funding in a lump sum through a Cooperative Agreement to the UDEQ for use at Eureka, and

WHEREAS, the EPA shall provide funding from EPA’s Portland Cement Special Account to the UDEQ through a cooperative agreement to pay for operation and maintenance work at the Portland Cement NPL Site, which in turn will free up UDEQ funding for use at other State sites, including Eureka, and

WHEREAS, the EPA has received American Reinvestment and Recovery Act (ARRA) funding to expedite completion of remediation action at the Eureka Mills Site, Juab County, and

WHEREAS, the EPA agrees to change the State of Utah's ("State") cost share schedule of payments to ease the immediate financial burden to the State that would be caused by an expedited spending schedule, and

WHEREAS, the EPA acquired additional Real Property to implement remedial action after executing the original SSC on July 12, 2004, and has obtained commitments from third parties to take title to that real property when remedial action is completed but desires the State to assure that the State will take title to that real property in the event the commitments of the third parties are not realized,

NOW, THEREFORE, in consideration of the foregoing, the mutual promises of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following.

1. The authority for this Amendment includes Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. '9601 et seq., the National Oil and Hazardous Substances Pollution Contingency Plan, 55 FR 8666 et seq. (40 CFR Part 300, March 8, 1990, hereinafter referred to as the "NCP"), 40 CFR Part 35, Subpart O, (Cooperative Agreements and Superfund State Contracts for Superfund Response Actions) and 40 CFR Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

2. The SSC remains in full force and effect except as specifically modified herein.

3. Section C.1 of Section C. Purpose is hereby amended as follows:

C. 1. The first purpose of this Contract is to memorialize the respective responsibilities of EPA and UDEQ (collectively, the "Parties") with respect to Fund-Lead cleanup of the following areas during RA: (1) residential areas (as shown on the map attached to the SSC as Attachment A); (2) Chief Mine No. 1; (3) Chief Mill Site No. 1; (4) Chief No. 1 Mill Tailings/Chief Mill No. 1; (5) Eureka Hill Waste Rock; (6) Eagle and Blue Bell Mine, Transition and Dump; (7) Snow Flake Mine (8) Open Cell; (9) OU-2 (consisting of the Gemini Mine, Bullion Beck Mine and Bullion Beck Mill); (10) Drainage Gulches/Haul Roads and Sedimentation Ponds, excluding the Knightsville Drainage area; and (11) Secondary Water System & Well (the "Fund-Lead Areas").

The boundaries of the Fund-Lead Areas are generally depicted on the map attached to the SSC as Attachment A. However, the Fund-Lead Areas do not include: (i) those areas for which EPA has obtained funds furnished by a PRP for cleanup; or (ii) areas cleaned up by PRPs themselves regardless of whether Attachment A depicts those excluded areas within the boundaries of the Fund-Lead Areas.

The second purpose of this Amendment is to indicate the Parties' intention to have UDEQ perform operation and maintenance of Non-Fund Lead Areas RA with special account funding assistance from EPA.

4. Section D.1 of Section D. Anticipated Process is hereby amended as follows:

D.1 Upon execution of this Amendment, EPA will immediately proceed with the RA activities for the Fund-Lead Areas that will meet the requirements of the ROD.

5. Section G.2 of Section G. Responsibilities of the Parties is hereby amended as follows:

G.2 EPA will use its best efforts to provide UDEQ with adequate funding for oversight of the Fund-Lead Areas RA through the Cooperative Agreement (Block Grant). In addition, EPA will provide UDEQ with available funding through Cooperative Agreements or other appropriate instruments to close the open cell, implement and maintain necessary institutional controls and to conduct operation and maintenance as described in the Operation and Maintenance Plan and Operation and Maintenance Manual concurred to in writing by UDEQ and incorporated herein as **Attachment B**.

6. Sections H.6, H.7.a. and H.7.f. of Section H. Cost Share, Payments and Management Assistance is hereby amended as follows:

H.6 Prior to commencement of construction in any calendar year and more frequently if additional funds become available to EPA, EPA will notify UDEQ in writing of the amount of funds it expects to expend during that calendar year on Fund-Lead Areas RA, which notification will generally describe the work to be performed and the areas in which it is to be performed.

H.7. Subject to the provisions of Subparagraph H.5 of the Contract, the State shall pay ten percent of the actual costs of Fund-Areas RA as follows:

Following the end of each calendar year, the EPA shall submit a bill to the UDEQ showing actual RA costs incurred during the preceding calendar year, which costs shall be itemized in the EPA's monthly reports submitted pursuant to Paragraph W.1., infra. Billing will occur annually. The State may request additional information at any time. Disputes concerning costs shall be subject to the dispute resolution provisions herein. Subject to the above conditions, within 60 days of receiving the bill, the State shall pay the costs share amount reflected in the following schedule which reflects the remaining State cost share payments of \$3,942,657 for the next ten years. The Parties may revise the payment schedule upon mutual agreement in writing.

Billing Date	Cost Share Amount
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January 1, 2011	\$394,265.70
January 1, 2012	\$394,265.70
January 1, 2013	\$394,265.70
January 1, 2014	\$394,265.70
January 1, 2015	\$394,265.70
January 1, 2016	\$394,265.70
January 1, 2017	\$394,265.70
January 1, 2018	\$394,265.70
January 1, 2019	\$394,265.70
January 1, 2020	\$394,265.70

H.7.f This Contract creates no obligation for funding other than that described in this section. EPA understands that the State is making no representations, commitments, or assurances that further funding is available, and EPA agrees that it will not file an action against the State based on claims that the State represented that funding was available.

7. Section L.1 of Section L. Institutional Controls and Future Maintenance of the Remedy is hereby amended as follows:

L.1 To the extent of its authority under applicable law, UDEQ agrees to assist the City of Eureka to administer any ICs implemented by EPA as a component(s) of the remedy as described in Attachment B. If an IC fails, UDEQ shall work with the City of Eureka, with EPA's concurrence, to take such measures as are necessary to ensure protection of human health and the environment, including, but not limited to, establishment of other ICs. EPA may reopen the ROD if necessary and appropriate.

8. Section V. Property Title and Interest Acquisition is hereby amended as follows:

V.1 In order to implement and complete the RA activities at the Site, EPA may acquire certain interests in ten (10) parcels of real property at or underlying the Site (hereinafter referred to as "Real Property"). The Real Property is identified specifically in Attachment C hereto. EPA may transfer Real Property to a qualified responsible party through a settlement agreement negotiated before the completion of the RA. For Real Property not transferred in this manner during RA, EPA will seek to transfer the interests in real property directly to any entity that the State or EPA identifies as willing to accept it when the RA is completed as contemplated in this Contract. The State agrees to act as guarantor for the property transfer and agrees to accept transfer of title if the qualified entity does not accept title. If neither the State nor EPA is able to identify a qualified entity willing to accept title, all interests in Real Property acquired by EPA in the course

of the RA effort and in EPA's possession at the completion of the RA shall be transferred to the State when the RA is completed as contemplated in this Contract. Pursuant to CERCLA Section 104(j), the State assures EPA that it will accept transfer of the interests. If the State elects to dispose of the interests acquired, it shall impose suitable restrictive controls on the property consistent with long term protection of the public interest.

9. **Attachment B** of the SSC is hereby amended as set forth in the attached Amended Attachment B. Amended Attachment B consists of B-1 Operation and Maintenance Plan dated July 31, 2009 and B-2 Operation and Maintenance Manual dated July 31, 2009. Amended Attachment B is incorporated as if fully set forth herein. However, the Parties through a written concurrence signed by both parties may modify Amended Attachment B without further amending the SSC. In the event of a conflict between the provisions of the SSC and Amended Attachment B, the provisions of the SSC shall govern.

10. **Attachment C** of the SSC is hereby amended and restated as set forth in the attached Amended Attachment C. Amended Attachment C consists of the list of properties acquired by EPA in order to implement and complete the RA activities at the Site.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment #1 to the SSC in duplicate. This Amendment #1 is effective upon the date of the last signature affixed below.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____
Carol L. Campbell
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation
Date _____

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____
Amanda Smith
Acting Executive Director
Department of Environmental Quality
Date _____